

PT 98-84

Tax: PROPERTY TAX
Issue: Charitable Ownership/Use

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS**

ST. JOSEPH AMERICAN LEGION)		
VETERAN'S ASSOCIATION)	Docket #	95-10-97
Applicant)		
)	Parcel Index #	28-22-14-135-001
v.)		
)		
THE DEPARTMENT OF REVENUE)	Barbara S. Rowe	
OF THE STATE OF ILLINOIS)	Administrative Law Judge	

RECOMMENDATION FOR DISPOSITION

Synopsis:

The hearing in this matter was held at the Illinois Department of Revenue, 101 W. Jefferson, Springfield, Illinois, on March 23, 1998, to determine whether or not Champaign County Parcel Index No. 28-22-14-135-001 qualified for exemption during the 1995 assessment year.

Perry West, current Commander, and Rondeau "Ron" Du Frane, Commander in 1995 and current Senior Vice Commander of St. Joseph American Legion Veteran's Association, (hereinafter referred to as the "Applicant") were present and testified on behalf of the applicant.

The issues in this matter include, first, whether the applicant was the owner of the subject parcel during the 1995 assessment year; secondly, whether the applicant is a veteran's organization; and lastly, whether the parcel was used by the applicant for charitable purposes that were also civic and patriotic during the 1995 assessment year. Following the submission of all the evidence and a review of the record, it is determined that the applicant owned the parcel during all of the 1995 assessment year. It is also determined that the applicant is a veteran's organization. Finally, it is determined that the applicant did not use the property for charitable

purposes that were also civic and patriotic during the 1995 assessment year.

Findings of Fact:

1. The jurisdiction and position of the Department that Champaign County Parcel Index No. 28-22-14-135-001 did not qualify for a property tax exemption for the 1995 assessment year was established by the admission into evidence of Dept.'s Ex. Nos. 1 through 5. (Tr. p. 9)

2. On January 10, 1996, the Department received a property tax exemption application from the Champaign County Board of Review for Permanent Parcel Index No. 28-22-14-135-001. The applicant had submitted the request, and the board recommended that the Department deny the exemption for the 1995 assessment year because the parcel was not in exempt use. The Department assigned Docket No. 95-10-97 to the application. (Dept. Grp. Ex. No. 2)

3. On May 23, 1996, the Department denied the requested exemption application, finding that the property was not in exempt ownership and use. (Dept. Ex. No. 3)

4. The applicant timely protested the denial of the exemption and requested a hearing in the matter. (Dept. Ex. No. 4)

5. The hearing at the Department's offices in Springfield, Illinois, on March 23, 1998, was held pursuant to that request. (Dept. Ex. No. 5)

6. The applicant acquired the subject parcel by a quitclaim deed dated August 19, 1947. (Dept. Ex. No. 2 pp. 5-6)

7. Located on the property is a one-story 2,300 square foot building. The building contains an entrance, a large open room, 3 storage areas, two bathrooms, a furnace room, and a kitchen. (Dept. Ex. No. 2 pp. 3, 16)

8. The applicant uses the building for American Legion and auxiliary monthly meetings and for storage of Legion paraphernalia and memorabilia. (Dept. Ex. No. 2 p. 3)

9. The applicant was organized pursuant to the "General Not for Profit Corporation Act" on September 4, 1951, for the following purposes:

Social, civic and patriotic including fostering, encouraging and promoting the well being of servicemen and veterans, and in addition to or in explanation of the powers granted by statute shall have power to procure, acquire, provide, and maintain a suitable home to be used in the conduct of its activities and to do all things incidental to and necessary and proper to be done in connection with its objects, or as now authorized by law of the State of Illinois, but not for pecuniary profit of any of the corporation's members. (Dept. Ex. No. 2 pp. 10-13)

10. The applicant is very visible in the community. They participate with the local schools in the Boy's State Program and good citizenship award programs. They have a representative of both the Legion and auxiliary that go to the Danville Veteran's Hospital on a weekly basis. The auxiliary uses the building on the property in question for collection and storage of clothing and books that are subsequently distributed to the patients in the hospital. The applicant participates in the Gift to the Yank program, which ensures that every patient in the hospital has a Christmas present to open. (Dept. Ex. No. 2 p. 3; Applicant's Ex. No. 1; Tr. p. 20)

11. The building on the subject parcel is used to store color guard equipment for parades. The post also helps the boy scouts properly burn flags that have deteriorated. The members of the applicant's post decorate graves with flags on Memorial Day. Members hold two "super bingo's" at the hospital. (Applicant's Ex. No. 1; Tr. pp. 14-15, 18-20)

12. The applicant allows the senior citizens to use the building for dinners. The applicant loans tables at no charge to a local church for Vacation Bible School. Members are allowed to use the building free of charge after funerals for dinners and family gatherings. The applicant is selective about who they let use the building and usually it is members of applicant's organization or another not-for-profit organization that do so. The limitation is due to insurance concerns. The applicant does not charge rent for the use of the building. (Applicant's Ex. No. 1; Tr. p. 24-25)

13. The kitchen on the subject premises is used for a county meeting each year, where the applicant serves food free of charge. Applicant also serves food to its members, free of charge, at the annual membership meeting. The Boy Scouts used it once to have a fish dinner as a fundraiser. (Tr. p. 16)

14. There is no bar on the premises. The applicant does not have a bingo license, a pull-tab license, or a liquor license. Food is not served on a regular basis. (Tr. pp. 15-16, 27)

15. Some of applicant's income is from the fish sandwich fundraiser held in conjunction with the fall festival in the Community Park. The proceeds from that, plus membership dues, is applicant's major source of income. Applicant prepares the food for the fish in the building on the subject property. (Applicant's Ex. No. 2; Tr. pp. 16-17)

16. Applicant donates money to the boys and girls sports teams of the town. Money and supplies are donated to the Boy Scouts and senior citizens as requested. (Tr. p. 18)

Conclusions of Law:

Article IX, §6 of the Illinois Constitution of 1970, provides in part as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

This provision is not self-executing but merely authorizes the General Assembly to enact legislation that exempts property within the constitutional limitations imposed. City of Chicago v. Illinois Department of Revenue, 147 Ill.2d 484 (1992)

Pursuant to the authority granted by the Constitution, the legislature has enacted statutory exemptions from property tax. The provision at issue is found at 35 ILCS 200/15-145 and states:

All property of veterans' organizations used exclusively for charitable, patriotic and civic purposes is exempt.

In interpreting the above statutory language, the Supreme Court in North Shore Post No. 21 v. Korzen, 38 Ill.2d 231 (1967), held that the predecessor statute to 35 ILCS 200/15-145¹ was constitutional and that the provision granting an exemption to a veteran's organization required

¹. At the time North Shore Post No. 21 v. Korzen was decided, the exemption for veteran's organizations was found at Ill. Rev. Stat 1963, chap. 120, par. 500.18. The relevant language of

the organization's utilization of the property encompass all three of the required uses: civic, patriotic, and charitable. Regarding the constitutionality of the statute, the court said:

It is our view that the legislature, in enumerating the purposes for which property must be used to render it exempt, meant to use the conjunction “and” in its ordinary sense rather than as a disjunctive conjunction which would permit any one of the three stated uses as being sufficient to exempt the property from tax. Therefore, in order for property of veterans’ organizations to be exempted from taxation it must be shown not only that the property was used exclusively for charitable purposes, but also that such use was patriotic and civic. This is not a broader exemption than is permitted by the constitution, rather it is more restrictive, therefore, section 19.18 pertaining to veterans’ organizations is not unconstitutional. *Id.* at 233-234.

In North Shore, the court found that the applicant's usage of the property for its meetings, wedding receptions, and maintaining a bar on the premises necessitated a finding by the court that the primary use of the property was not exempt. The Supreme Court stated:

Plaintiff has not shown, however, that the primary use of the premises was in furtherance of these charitable purposes. The record shows that the premises are used primarily for the following purposes: meetings, both business and social, of the plaintiff and its various auxiliaries; wedding receptions of members of the Post and third parties; dinners and social parties for plaintiff and its auxiliaries; meetings of boy scout troops; meetings of other veterans organizations for a rental donation of \$15; a bar is maintained primarily for members; pool and billiard facilities are maintained for members and their guests; and a five-room apartment is maintained for a caretaker who pays \$40 per month as caretaker. None of these uses are *per se* patriotic and charitable. *Id.* at 235-236. (Emphasis added.)

It is well settled in Illinois that when a statute purports to grant an exemption from taxation, the tax exemption provision is to be construed strictly against the one whom asserts the claim of exemption. International College of Surgeons v. Brenza, 8 Ill.2d 141 (1956) Whenever doubt arises, it is to be resolved against exemption and in favor of taxation. People ex. rel. Goodman v. University of Illinois Foundation, 388 Ill. 363 (1941). Further, in ascertaining whether or not a property is statutorily tax exempt, the burden of establishing the right to the exemption is on the one who claims the exemption. MacMurray College v. Wright, 38 Ill.2d 272

(1967)

There is no dispute that the applicant herein is a veteran's organization. Therefore, the only question before me is whether the activities of the applicant on the parcel in question qualify as charitable, patriotic, and civic. The Supreme Court in North Shore specifically enumerated some of the same activities that this applicant does on the parcel in question as not *per se* charitable and patriotic.

I therefore find that the applicant has not established that its use of the subject property qualifies the parcel for a property tax exemption. There is no dispute that the applicant's endeavors are certainly commendable and benefit a great number of people. The court has stated, however, that the use must be exclusively for charitable purposes, which are also patriotic and civic.

It is therefore recommended that Champaign County Parcel Index No. 28-22-14-135-001 remain on the tax rolls for the 1995 assessment year.

Respectfully Submitted,

Barbara S. Rowe
Administrative Law Judge
November 4, 1998